

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SKYMARK PROPERTIES
CORPORATION, INC., et al.,

Plaintiffs,

HONORABLE DAVID R. GRAND

V.

No. 20-12372

MORTEZA KATEBIAN, et al.,

Defendants.

HEARING ON MOTIONS 138, 155, 157, 158
(Conducted Via Zoom Videoconferencing Software)
Tuesday, November 23, 2021

Appearances (Continued on following page):

Andrew Kochanowski
Sommers Schwartz
One Towne Square, #1700
Southfield, Michigan 48076
(248) 355-0300

Sean Michael Walsh
Lippitt O'Keefe
370 E. Maple Street, 3rd Fl
Birmingham, MI 48009
(248) 646-0109

On behalf of Defendants

Fred A. Schwartz
Shahady Wurtenberger
200 E. Palmetto Park Road, #103
Boca Raton, FL 33432
(561) 910-3064

Katebians, Morrow, 2638168,
Flemington, Samuel,
Sahebdivanis, Behrouz

On behalf of Plaintiffs

To obtain a certified transcript, contact:
Sheri K. Ward, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
(313)234-2604 • ward@transcriptorders.com

Transcript produced using machine shorthand and CAT software.

*Hearing on Motions 138, 155, 157, 158
Tuesday, November 23, 2021*

Appearances (Continued):

Robert A. Weisberg
Carson Fischer
4111 Andover Road West
Bloomfield Hills, MI 48302
(248) 644-4840
On behalf of Green Lake

Maureen A. Harrington
Greenfield
55 S. Market Street, #1500
San Jose, California 95113
(408) 995-5600

Doron Yitzchaki
Dickinson Wright
350 S. Main Street, #300
Ann Arbor, Michigan 48104
(734) 623-1947
On behalf of Peter Chang

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E X H I B I T S

None Offered or Received

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Detroit, Michigan

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2:04 p.m.

- - -

(Call to Order of the Court.)

THE CLERK: The Court calls Case Number 20-12372,
Skymark v. Katebian.

THE COURT: Thank you.

If we could have appearances of counsel starting with the
plaintiffs.

MR. KOCHANOWSKI: Good afternoon, Your Honor.
Andrew Kochanowski and Fred Schwartz for the plaintiffs.

MR. WALSH: Good afternoon, Your Honor. Sean Walsh
on behalf of the defendants other than Green Lake and
Peter Chang.

MS. HARRINGTON: Good afternoon, Your Honor.
Maureen Harrington on behalf of Defendant Peter Chang.

MR. YITZCHAKI: Good afternoon, Your Honor.
Doron Yitzchaki on behalf of Defendant Peter Chang.

MR. WEISBERG: Robert Weisberg for Green Lake.

THE COURT: All right. Thank you. And we're here on
this slew of motions that I have before me. I have read
everything and issued some preliminary orders already, as you
are aware. I saw there was another filing I think that came in
today that I had a chance to read so I'm up to date on

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1 everything, and we're just going to take them one at a time.

2 The first motion is Number 138. This is the Katebian
3 Defendants' motion to restrict the disclosure of documents to
4 not the, not the plaintiffs, but to I guess some of the
5 individuals who are affiliated with the plaintiffs.

6 As I said, I have read everything. I'm really not looking
7 for -- to rehash everything that's been briefed, but if there's
8 anything that anyone wanted to highlight or add, you could do
9 so briefly at this time starting with the moving party.

10 **MR. WALSH:** Thank you, Your Honor. Sean Walsh on
11 behalf of the Katebian Defendants. It is our motion, and I
12 guess all I want to add is that several of the comments by
13 plaintiffs have been well taken, and I, shortly before the
14 hearing, sent an email to plaintiffs' counsel suggesting that
15 we agree to enter a very simplified protective order that
16 simply restricts the disclosure to third parties and prohibits
17 the use of anything gained through the litigation for any
18 purposes other than this litigation.

19 **THE COURT:** And when you say "third parties" though,
20 are you including in that Mr. Missaghi or not?

21 **MR. WALSH:** I'm including any third parties, but my
22 suggestion was that disclosure would be permitted provided they
23 agreed to be bound by the Court's protective order.

24 **THE COURT:** I see. Okay. All right. Thank you.
25 Mr. Kochanowski, with that type of approach, does that resolve

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1 this motion? In other words, can you -- will your side agree
2 to --

3 **MR. KOCHANOWSKI:** Sorry, Your Honor. I'm sort of on
4 a remote so we may have a little delay here.

5 Yeah, we got that -- Mr. Walsh sent that over a couple
6 hours ago. I guess on the surface it looks like a reasonable
7 suggestion. I'd like to see where we go with the scheduling
8 order, and, assuming that, you know, we have got general
9 discovery, it would make sense to me for all parties to agree
10 to a simplified protective order because we'll be producing
11 documents as well and we have the same interests as Mr. Walsh
12 in that respect.

13 So I think that what we ought to do is discuss a
14 simplified, basic protective order to do exactly what Mr. Walsh
15 says, use documents for this case and so on, and so that's my
16 only comment.

17 **MR. WALSH:** And I have no objection to that process,
18 Your Honor.

19 **THE COURT:** All right. Very well. And, frankly, I
20 was, I was not inclined to grant the specific relief requested
21 in the motion in terms of limiting or prohibiting kind of on a
22 blanket basis Missaghi from -- or Ms. Alizadeh from seeing any
23 documents in the case, especially given that none of the --
24 there had been no specification as to which documents were or
25 were not covered by any sort of confidentiality concerns, and I

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1 just don't think that there had been an adequate showing of
2 good cause for the need of that type of a blanket prohibition
3 on the sharing of information. And I also note that the
4 defendants -- or the Katebian defendants in their motion
5 indicate that the plaintiffs are allegedly controlled by
6 Mr. Missaghi and/or Ms. Alizadeh such that it -- at least based
7 on that it really would not be appropriate to blanketly
8 prohibit them from reviewing documents. So the Court will deny
9 that aspect of the motion.

10 A lot of the motion though was based on concerns about
11 litigation abuse by Mr. Missaghi, and it really detailed some
12 communications that I find very concerning, and they are
13 communications that I am not saying that these have been
14 determined to be authentic. I think that the plaintiff in its
15 response brief hinted that it may contest the authenticity of
16 some of these, although it really wasn't very specific, so I
17 think for now the appropriate thing for me to do is just voice
18 the Court's concern about these types of communications and
19 indicate what my expectations are particularly in light of the
20 order that I issued the other day about the plaintiff's use of
21 a doctored photo in a deposition and everything that was
22 related to that so -- and my, my overall concern is that this
23 litigation be used only for proper purposes.

24 The Court exists to provide a forum for litigants to have
25 their legitimate disputes resolved. We don't exist to provide

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1 a landscape for a full war or some sort of running man type
2 game for one side's sinister enjoyment, and so many of the
3 communications that I'm about to just reference briefly
4 certainly suggest that the Court is well within its rights to
5 be concerned that that might be one of the goals of
6 Mr. Missaghi here.

7 And I start with his July 20, 2018 email. And, again, I
8 understand not all of these have been authenticated. At the
9 same time Missaghi has not specifically disavowed any of them,
10 to my knowledge. And he indicated that he was only going to
11 stop suing Katebian "when I know that there is nothing left,"
12 and "just when it's almost over, I will start a new one." So,
13 again, that to me suggests not just trying to resolve disputes
14 but something beyond that.

15 He then, with respect to Petrilli, indicates, "First you
16 backstab me and betray me with Homewood, then I now see that
17 your assistance and full cooperation with the" -- I won't even
18 say the characterization of the Katebians, he used a derogatory
19 term to refer to them -- "is in full support." Again, more
20 derogatory terms, and then it says, "Welcome to the show."

21 Again, this isn't some sort of show. This isn't some sort
22 of game. We're here to, as I said, resolve legitimate
23 disputes.

24 And he did something very similar with respect to
25 Ms. Sahebdivani, where he says, "Anyhow, these battles are in

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1 the past. The war is about to begin, and I needed the time to
2 plan it out." Again, same type of concerning verbiage from my
3 perspective.

4 And then, lastly, with this Mr. Mehta, and he says, "Your
5 [sic] a truly funny dude. I like the way you go about life and
6 your bullshit. It fits right into Bangladesh culture. I'm
7 looking forward to seeing you in person. It will be a very fun
8 and comical time. I'm sure of it."

9 He goes on to say, "Except the silence you have been under
10 will unravel in this chess game you have become a part of.
11 Except none of you know how to play the chess game. Because
12 chess players think about the future and their next moves."

13 And so, again, all of that, especially coupled with what
14 we saw at the deposition with the use of the photograph and
15 some of the other issues, which are, at least at this point,
16 not quite as clear-cut as the photograph, but they all, again,
17 point to this concern the Court has about the misuse of this
18 litigation process, and I'm not going to stand for it, and I'm
19 certainly not going to be chastised by any of the parties
20 indicating that this case has become a circus when the
21 contributions to any kind of circus are very clear.

22 So the Court will, as I said, deny the motion that was
23 filed, but the -- I do think it's appropriate, in light of all
24 of that evidence, to make very clear to the plaintiffs -- and I
25 will do this in the order that I issue -- that any action taken

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1 by them or their agents that threatens or intimidates a witness
2 or a party to this litigation or that abuses this litigation
3 process for any kind of improper purpose is going to result in
4 the imposition of an appropriate sanction, and that could be up
5 to and including the dismissal of the plaintiff's claims with
6 prejudice. And so that's how I'll handle that motion.

7 All right. Now we can move on to the next motion before
8 the Court, which is Number 155, and that is plaintiff's motion
9 for an order related to the prior motion to compel. It looked
10 like part of that had been resolved and I guess part
11 unresolved, but let me give an opportunity, Mr. Kochanowski, to
12 you to address any issues you wish to with respect to that
13 motion.

14 **MR. KOCHANOWSKI:** Yes, Your Honor, and before I do
15 that though I would like to just put on the record a couple of
16 things from the plaintiffs' counsels' perspective because we
17 are in a difficult situation with Mr. Missaghi's various
18 communications. We want to make absolutely clear we don't
19 represent Mr. Missaghi, and we have not represented
20 Mr. Missaghi, and Mr. Missaghi is, to our thinking, not a party
21 in this case. We have not been a party to those
22 communications. Mr. Missaghi didn't seek our advice.

23 I have heard informally he contests that some of those
24 communications are not his. Certainly the July 2018 I believe
25 is his. That communication has been out there for three years

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1 as plaintiffs have been learning about what actually happened,
2 and some of the events of this case happened six, eight months,
3 a year or two after that communication.

4 I am aware that Mr. Mehta and Ms. Sahebdivani are also
5 parties in various fraud litigations brought by various other
6 companies owned by Alizadeh in Canada. There has been -- at
7 least some of the litigation that the Court is seeing the
8 result from the In Re: Comfort Capital litigation that I think
9 we gave the Court back in April may have included Mr. Mehta in
10 it or Ms. Sahebdivani. So to that extent I think that
11 Mr. Missaghi is possibly addressing other cases in Canada that
12 are ongoing.

13 With having said that, I want to assure the Court that --
14 I'll speak for Mr. Schwartz on this as well. We have
15 absolutely made it very clear that we don't intend to be
16 involved in litigation where this kind of stuff occurs and so
17 on and so forth. So we're with the Court on this. We, as
18 counsel, have no intention and no interest in litigating these
19 kind of communications. We don't believe they are client
20 authorized or they represent the client's viewpoint or
21 interest, and that is, unless Mr. Schwartz wants to add to
22 that, that is something I want to state on the record because I
23 found that the, the doctored photo event highly disturbing and
24 have no wish to have it rebound on us professionally, in
25 addition to on the client's interest in this case.

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1 **MR. SCHWARTZ:** I would add one thing, Your Honor, if
2 I may, and forgive me for breaking in. One of the problems we
3 have in this case is verifying documents, and that's apparently
4 on both sides. We have asked continually of the Katebian
5 defendants to provide us documents in native format so that --
6 and even as to the contested or possibly contested text
7 messages and certainly as to emails and other documents. If we
8 could get documents in native format, we could verify from whom
9 they come and when they were created and how they were created.
10 We haven't been able to get that, and we're seeking now,
11 particularly with some of the issues you raised in your order,
12 Judge, to get native format documents so that everything can be
13 fully verified. We've gotten no documents in native format in
14 the so-called 80,000 pages of discovery provided by the
15 Katebian defendants even though the Federal Rules of Civil
16 Procedure now provide for documents to be provided in native
17 format.

18 So that's one of the -- and that's not as an excuse. It's
19 as an explanation of how going forward we want to make sure
20 that everything is 100 percent real, correct documents, not
21 created documents.

22 **MR. WALSH:** Your Honor, may I offer two thoughts in
23 response?

24 **THE COURT:** Go ahead.

25 **MR. WALSH:** Number one, assuming for purposes of

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1 argument here that Mr. Missaghi is not the client, not an
2 owner, not a representative of these plaintiffs, I fail to
3 understand why a single discovery document is provided to
4 Mr. Missaghi and why that has to happen.

5 Number two, I understand plaintiff's contention regarding
6 native format documents, but what that says to me is that they
7 understand how to authenticate documents and purposefully then
8 neglected to do so with what they presented as to
9 Mr. Katebian's supposed arrest and interrogation.

10 **THE COURT:** Well, the difference is that they did say
11 how they got those documents. They said that they got the
12 Katebian arrest documents from the Iranian government website
13 and that they were authentic, and in fact they referred to the
14 federal rule of evidence. They were actually off one. I
15 believe it's 902, and they referred to 903. But, at any rate,
16 those documents are essentially self-authenticating subject to
17 your side's opportunity to disprove the authenticity.

18 But, you know, the big problem here is that all I see is
19 essentially every side's position is that the other side's
20 documents are fabricated. We heard it here just today,
21 Mr. Kochanowski saying that Mr. Missaghi's contention is that
22 some of these emails are fabricated and not legitimate, and I
23 know those aren't even necessarily part of the case. It just
24 kind of exemplifies the issue, and your clients, Mr. Walsh,
25 they say that all of these business records are fabricated and

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1 arrest records are fabricated, and the plaintiffs also refer to
2 certain documents as being "fake." I mean there's so much of
3 it in the briefing that it's impossible -- and, to boot,
4 neither of you seem to like to cite to evidence when you brief
5 and so it's just paragraph after paragraph after paragraph of
6 what you say happened and what your clients say happened with
7 no citation to any record evidence whatsoever, and then all
8 each side does is in response say, no, those are all lies and
9 those documents are all fake, frauds and fabrications.

10 So it's just a very -- it's very unfortunate. I have
11 never seen litigation like this. It makes it very difficult
12 for the Court to get its arms around, you know, what's going on
13 here, and -- but, at least with respect to the documents that
14 you raise, Mr. Walsh, there is an authenticity kind of path,
15 and I don't understand why your clients are just now
16 essentially saying, well, we're going to look into this because
17 those issues were raised many months ago. So, frankly, it
18 doesn't look good for any of your clients, for either the
19 plaintiff's clients or the defense.

20 **MR. WALSH:** Your Honor, one correction. The arrest
21 document did not come from an official website. It came from
22 Mr. Missaghi through some Iranian source, and I was not
23 referring to the business records, Your Honor, simply the
24 arrest documents, and I --

25 **MR. SCHWARTZ:** Mr. Walsh is correct, Your Honor. The

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1 arrest records came through the Iranian police, but the
2 business records are on numerous websites, including U.S.
3 Government websites.

4 **THE COURT:** Okay. Right. I'm sorry. The business
5 records are the ones that came from the Iranian Government
6 website; correct?

7 **MR. SCHWARTZ:** Correct.

8 **THE COURT:** The arrest records, the plaintiffs are
9 now saying, well, we will just wash our hands of those;
10 correct?

11 **MR. SCHWARTZ:** Correct. They are irrelevant and
12 should not have been raised. We apologize for even bringing it
13 up at one point. They are not relevant to the case. But the
14 business records certainly are, particularly since the
15 defendants deny they have ever been in any of these business.

16 **THE COURT:** So the problem is maybe they are not
17 directly relevant, the arrest records are not directly
18 relevant, but in a case like this where everyone's position is
19 the other side's evidence is fabricated, the fact that these
20 arrest records were created and offered for use in a
21 deposition, even if they are now withdrawn, it just raises very
22 serious questions about the legitimacy of all of the evidence
23 and particularly where, as I said, the other side's position is
24 they are all, they are all fake.

25 So, you know, I don't know -- you know, we just -- we need

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1 to get to the bottom of all of this and have this case decided
2 on, on the actual records, although I don't know how that's
3 ever going to happen when, when everyone's position is that the
4 other side's evidence is fake. It's just, you know, really,
5 really unfortunate to be in this kind of situation, but we are
6 and so we have to move forward and we have to allow you all to
7 attempt to gather the relevant records and authenticate them
8 properly under the law, and the other side can object to them
9 if it believes they are objectionable, and, you know -- who
10 knows? -- maybe eventually some jury will have to decide whose
11 records are legitimate and whose are not, but that's certainly
12 not the most ideal way to litigate a case.

13 **MR. WALSH:** Your Honor, one point, too. The
14 relevancy of the arrest records derives from the original
15 accusation in October of 2020 where the suggestion was that
16 Mr. Katebian was arrested in Iran with over \$1 million in U.S.
17 Currency. In a money laundering case alleging money into and
18 out of Iran, that's highly relevant.

19 **THE COURT:** All right. And, you know, as I said, if
20 nothing else, it's all wrapped up in the poor way in which this
21 race is being litigated. But, you know, I still have to decide
22 these motions, and, you know, the case still has to move
23 forward and kind of let the chips fall where they do. But it
24 just should be -- if it's not already, it should be clear by
25 now that I am not going to make decisions in this case based on

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1 accusations, based on evidence that is clearly of questionable
2 authenticity, based on -- based on assertions of fact that are
3 not supported by evidence. It's not going get anyone anywhere,
4 and, frankly, that's probably a large part why we're still here
5 now instead of further along. But hopefully that's clear now
6 as to what my expectations are to move this case along.

7 So let's get back to the motion that's here. Is it
8 accurate, Mr. Kochanowski, that Number 119 and your proposed
9 order as to 119 is truly unopposed so that we can put that
10 issue to bed?

11 **MR. KOCHANOWSKI:** We thought so, Your Honor. That's
12 the motion concerning the Canadian letters rogatory evidence.
13 We thought it was unopposed. Mr. Schwartz and I talked to
14 Mr. Walsh, and then we filed the proposed order, and the
15 response, from what I understand, and certainly in later
16 proceedings, was that Mr. Behrouz, Rouzbeh Behrouz and his
17 company were not going to withdraw their objection in Canada.
18 The effect of their objection in Canada is simply that the
19 Court won't issue any of the other orders compelling the Duca
20 Credit Union and other financial institutions to generate the
21 financial records that we have been asking for, and the court
22 will hear that motion subject to Mr. Behrouz's and his
23 company's objection I believe still on February 1st, and that
24 will just be the initial, I think, hearing on that.

25 So to that extent I think it was opposed, and our position

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1 is all of those records are something that should have been
2 produced by Mr. Katebian or Mr. Sahebdivani on behalf of
3 themselves, and one or the other or both have an interest in
4 First Line Canadian, but they have not produced any of those
5 records either. So, as we say in similar motions, we don't
6 have a single page of records, financial records, what happened
7 to the money both before -- after it left the Flemington and
8 Morrow bank accounts in the U.S. and went to Canada, and we
9 don't have any of the predecessor records as to the monies that
10 we believe went from Canada to abroad one way or another. I
11 mean none of that has been produced. So that's the best answer
12 I can give you on that.

13 **THE COURT:** All right. Mr. Walsh, where does your
14 client stand on that issue?

15 **MR. WALSH:** As to First Line Canadian, we agree, and
16 we don't have a dispute that First Line Canadian will produce
17 what is requested. In fact, I received yesterday the Duca
18 financial records that have been requested. They are being
19 uploaded to DISCO and are being produced.

20 The only disputes, such as it were, was, as to
21 Mr. Rouzbeh Behrouz, we agreed that we would produce him for
22 deposition, which we did, and he was deposed. Mr. Behrouz had
23 not agreed to withdraw the objections to the balance of the
24 letters rogatory as to Majestic, and we continued to speak with
25 him about that issue. But, again, we do not control him.

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1 But, as to First Line Canadian, we agree. The documents
2 not only should be but are being produced, and as soon as they
3 are uploaded to DISCO, which regrettably is, at least in part,
4 out of my control because I provide them to the company to
5 upload them. As soon as they are available, they will be
6 produced.

7 **MR. KOCHANOWSKI:** I think that the problem is,
8 Your Honor --

9 **THE COURT:** Go ahead.

10 **MR. KOCHANOWSKI:** The problem there is the continuing
11 objection of Mr. Behrouz and his company --

12 **THE COURT:** He's not a party to this case.

13 **MR. KOCHANOWSKI:** I appreciate that, but we have
14 offered a partial solution to, to defendants that First Line
15 Canadian and the plaintiffs in Canada jointly submit an order
16 to the Court that says the only preserve -- the only objection
17 is to the nonparties and that the Court can issue the letters
18 rogatory on the financial institutions, which are broader than
19 Duca, to obtain the information.

20 And we, we thought we agreed to that procedure three weeks
21 ago or so, and it hasn't happened. And so if we can have an
22 order that says that is a proper procedure so that the Canadian
23 court can look at 90 percent of the letters rogatory, and we'll
24 worry about Mr. Behrouz and Majestic, you know, separately,
25 then that would at least partially solve the problem. But this

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1 has been an ongoing issue for, for I think three or four months
2 now, and so that's why we -- we'd like to put it to bed
3 ourselves, and that procedure, I'm told by Canadian counsel,
4 should work, but it requires cooperation from, from First Line
5 Canadian, whoever actually controls that.

6 **MR. WALSH:** Your Honor, to be absolutely clear, the
7 agreement was, as to First Line Canadian, we had agreed to
8 withdraw the objection to the letters rogatory in Canada, and I
9 have instructed Canadian counsel to do that. I don't have a
10 great explanation for why they haven't done that yet, but the
11 fact is I spoke to my clients and said, regardless of what they
12 are doing, we have to produce these documents, and they have
13 secured those documents and sent them to me.

14 **THE COURT:** All right. And you have instructed the
15 Canadian counsel to withdraw the letters rogatory in Canada as
16 to First Line Canadian?

17 **MR. WALSH:** That's correct, Your Honor.

18 **THE COURT:** All right. With that, and the fact that
19 the First Line Canadian documents are being produced, there's
20 nothing else for the Court to order as to that particular
21 issue.

22 **MR. KOCHANOWSKI:** On the letters rogatory, correct.
23 It does not -- it does not resolve the question of Canadian
24 records and emails and so forth about these transactions that
25 are in the possession of the parties, which the Court ruled

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1 they have an obligation to produce directly.

2 **THE COURT:** But I thought they -- I thought Mr. Walsh
3 said those are being produced. Of course, the ones that are in
4 the parties' possession, they are obligated to produce those as
5 part of discovery. It has nothing to do with the letters
6 rogatory.

7 **MR. WALSH:** Agreed, Your Honor.

8 **THE COURT:** Exactly. Go ahead, Mr. Kochanowski.

9 **MR. KOCHANOWSKI:** Well, but, but what I heard
10 Mr. Walsh say is he now has the Duca financial records in his
11 possession. I don't know for how many years or what not, but
12 that's fine. That's only a portion of the other -- of the
13 records that were being sought on the Canadian side of the
14 financial transaction that we have.

15 Just to give the Court a flavor, the Bank of America
16 records that we had from a served subpoena showed probably a
17 half a dozen intermediary financial institutions that through
18 the monies that went through the BOA record, BOA accounts, went
19 to or through Canada. There are probably half a dozen
20 different --

21 **THE COURT:** You cut off. A half a dozen different
22 what?

23 **MR. KOCHANOWSKI:** Financial institutions in Canada.
24 So it's a much broader range of records than just the Duca
25 financial records. Mr. Katebian said he had a personal account

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1 and he had a company account there so I don't know what's
2 being, what's being -- you know, what Mr. Walsh is proposing
3 that he has, but I'll say it right now today there has not been
4 a page produced of anything from these defendants relating to
5 Canadian transactions, their communications with each other and
6 all of those things, and that stands today.

7 **MR. WALSH:** Your Honor, if I may, I had not yet
8 addressed what was and was not being produced by the parties.
9 I was simply referring to the letters rogatory issue as it
10 related to First Line Canadian.

11 As to the parties, I instructed, and they have performed
12 now, a search of all of their email, text, WhatsApp, other
13 accounts and electronic devices using the search terms
14 requested by plaintiffs and have forwarded to me the documents
15 that were derived from that search.

16 As they relate to individual accounts in Canada, the
17 plaintiffs did not submit document requests for the individual
18 defendant's accounts in Canada. They submitted requests for
19 company accounts in Canada, and they are all being produced.

20 **THE COURT:** We need you to produce everything that
21 you have been provided so far by your clients.

22 **MR. WALSH:** It is in the process of being uploaded to
23 DISCO. That should be a space of about two days, three at the
24 most. Once that is completed, I can do a privilege review, and
25 they will be produced. It should not be more than a week from

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1 today at the most.

2 **THE COURT:** All right. So I do think that we are
3 kind of conflating issues here in terms of these Canadian
4 companies and Canadian banks that are kind of just now coming
5 to light that were I don't think encompassed within -- well,
6 they were part of the letters rogatory, I guess, but not -- I
7 don't know -- not directly sent to the defendants.

8 Part of what we're doing here today is getting a
9 scheduling order in place at least as between the plaintiffs
10 and the Katebian defendants. I'll address the issue with
11 respect to the other defendants at the end. And so I mean
12 eventually all of these documents are going to need to be
13 produced.

14 To the extent that they are now identified and we can zero
15 in on them, you know, all the better, but I don't see -- I
16 guess I don't see awarding any kind of additional relief as to
17 the letters rogatory portion right now based on everything I
18 have heard today. It sounds like the only real remaining issue
19 as to that is this Rouzbeh Behrouz situation, and he's not a
20 party and so I can't compel, you know, anything as to him. And
21 I did though make sure that the plaintiffs had an opportunity
22 to depose him, and he has been deposed. So I just -- I don't
23 think there is anything else we need to compel at this point
24 with respect to the letters rogatory.

25 All right. The second part of the issue -- and this is

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1 one of the things I was referencing before. Let me pull this
2 up just quickly. This is -- I'll share the screen just for a
3 second.

4 All right. Can everybody see that?

5 This is, this is the second issue in plaintiffs' motion
6 that we're considering now. It's starting at Page ID 7615, and
7 we're now looking at these other materials that it says that,
8 while they did receive about 80,000 pages of documents, there
9 were no emails/texts/messages, et cetera, between the
10 defendants, no emails/texts/messages concerning the operation
11 of the shell companies Morrow and Flemington, no bank account
12 information, et cetera.

13 Mr. Walsh, at least as to what you indicated just a moment
14 ago about your clients now having conducted a search and
15 provided you with documents, do those documents address these
16 particular issues and their searches, address these particular
17 issues?

18 **MR. WALSH:** Your Honor, they will, and, more
19 importantly, the statement is not true. There have been emails
20 produced. Texts, I don't have a present memory of texts on
21 that topic having been produced, but, yes, what I instructed my
22 clients to do was to search everything using the terms that
23 plaintiffs supplied, and that captures Morrow, that captures
24 Vistamar, that captures the Florida property, that captures
25 Adeepoch, Medimax. Every term that they requested, we used.

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1 **THE COURT:** All right. And so all of the documents
2 that we're looking at here where Mr. Kochanowski's clients were
3 saying we have not received these yet, those are the ones that
4 you are telling me right now will be produced within a week?

5 **MR. WALSH:** They are included within there. There
6 are some of them that have been produced already
7 notwithstanding the contention.

8 **THE COURT:** All right. And then what about this
9 next -- what about this next category where we're talking about
10 this other company for the first time, V-g-e-n-c-o, and this
11 individual Vahan, last name Khandanyan?

12 **MR. WALSH:** Khandanyan I think is how they pronounce
13 it.

14 **THE COURT:** Are your clients producing documents,
15 emails, correspondence, et cetera, relating to these issues?

16 **MR. WALSH:** Yes, Your Honor.

17 **THE COURT:** Okay. And, again, within a week even --
18 I mean I want to be clear. It's Thanksgiving. I wouldn't
19 order you -- you know, I would give you a reprieve of those few
20 days if you need it, but if you're telling me you can do it
21 within a week, that's great.

22 Is that accurate? Your clients are going to produce all
23 of these documents within a week?

24 **MR. WALSH:** Two-part answer, if I might, Your Honor.
25 First, yes, my clients have conducted the searches and sent to

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1 me everything derived from those searches, which includes
2 Vgenco, Aratta, Khandanyan, all of those topics. They are
3 being uploaded.

4 I will confess. I have not searched them all to ensure
5 that they appear to be comprehensive, and perhaps we push this
6 to the end of next week to allow me to do that in the event I
7 need to tell them do a better job and get it back to me.

8 **THE COURT:** All right. I just, you know, with it
9 being Thanksgiving -- I kind of hate to sua sponte offer you
10 more time, but it is Thanksgiving, and I would rather, rather
11 just plan ahead, rather than with get a motion for additional
12 time.

13 **MR. WALSH:** I appreciate that, Your Honor.

14 **THE COURT:** Given how much time has elapsed and given
15 how much I'm understanding that you are doing and your clients
16 are doing even if it is late in the hour, a few extra days is
17 not the biggest deal.

18 So my order as to this is going to be that we discussed it
19 all on the record, that it was represented that all of these
20 particular, you know, specific factual issues that the
21 plaintiffs have raised in this filing, that the searches using
22 the plaintiffs' provided search terms have been undertaken and
23 that documents, responsive documents will be produced by the
24 end of next week. Okay?

25 **MR. WALSH:** Thank you, Your Honor.

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1 **THE COURT:** All right. So that is helpful. So we
2 can end -- that revolves that entire motion.

3 All right. So now the only other motions that we have are
4 these two motions for sanctions that were filed by, filed by
5 plaintiffs, one just a few days after the other. I don't know
6 why we would have two seriatim like that, but, Mr. Kochanowski,
7 where do things stand on these?

8 **MR. KOCHANOWSKI:** Well, I think you have just
9 resolved -- Your Honor has just resolved the one that -- and I
10 confess, I don't have them in front of me either, what number
11 it is, but the one that has to do with the Canadian records and
12 the shell company records particularly, what I would call the
13 transactional records motion, which traces the money -- which
14 traces the money from the BOA account and attempts to find out
15 where it came from to buy the Extensia note.

16 So when I hear Mr. Walsh's comments that that motion is
17 actually resolved in the sense that they will produce those
18 records and therefore my relief, which was let's accept -- we
19 would like the Court to accept these conclusions as true, well,
20 we're not going to get that relief. So I think that once we
21 see what they actually produce, then, then we can see -- and we
22 learn where it came from particularly, what accounts were the
23 defendants', what devices they searched, hopefully that all
24 will be clear, then that motion I think is resolved.

25 But the one that --

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1 **THE COURT:** That was the substrate one. That was
2 Number 158, which I'm looking at right now, wherein you folks
3 seek an order that the evidence they have refused to produce
4 establishes, and then it's getting into essentially the
5 plaintiffs' theory of the case with respect to all of the
6 entities and transactions that we have just discussed
7 that Mr. Walsh indicated documents will be forthcoming. And,
8 you know, it covers, as I said, the Vgenco, Aratta Partners,
9 Medimex, Medimax, the \$550,000 transfer to Duca Financial
10 Services records, the Canadian records that show this "monies
11 transferred among and between Canada, U.S. and Iran."

12 So I agree with the Court's ruling as to 155 that will
13 also resolve that one, although, you know, without prejudice,
14 and we'll just have to see what the, what the records show, and
15 hopefully there are no further disputes about which records are
16 and are not authentic because these are all the records coming
17 from the defendants, although I know that the plaintiffs'
18 position has been that some of those -- some of the records
19 that the Defendants have proffered, the plaintiffs' position is
20 those are "fake" so I guess we'll just need to see.

21 **MR. KOCHANOWSKI:** Well, I think, Your Honor, that --
22 just for the record because Mr. Walsh did say, when he was
23 describing what was being produced, that we did not seek, you
24 know, non-Duca Canadian records, and I think that's inaccurate.
25 And I'm looking at our Request for Production Number 1 appended

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1 to 158 for I think several of the defendants, and Request For
2 Production Number 1 asks for bank or other account statements
3 for the period 2017 to the present relating to -- and it lists
4 a lot of things, including any account you maintained in the
5 United States or Canada, any bank account you maintain on
6 behalf of any third party so -- and then we list all of the
7 companies and so on.

8 So I think we were clear that each of the Defendants, the
9 Katebians, Mr. Beliz [sp] and Mr. Behrouz and those companies
10 that they formed, that's the Canadian records or U.S. records
11 that we were seeking.

12 **MR. WALSH:** Your Honor -- and, I apologize, I have to
13 respond. Request Number 1, Subrequest 7, asks for "any bank
14 account you maintain in the United States or Canada." Number 8
15 says, "any brokerage account you maintain in the United States
16 or Canada." 9 says, "Any bank account you maintain on behalf
17 of any third party." That is not a request for each of the
18 individual defendants' bank accounts in their own names in
19 Canada. It's simply not.

20 **MR. KOCHANOWSKI:** Well, I'm sorry, I'm reading --

21 **MR. WALSH:** Maybe we're reading different things.

22 **MR. KOCHANOWSKI:** I'm reading from Page -- it's 158.

23 **THE COURT:** I can't hear you, Mr. Kochanowski.

24 **MR. KOCHANOWSKI:** It's 158-3, Page ID 8269. This is
25 requests to admit, production and interrogatories, directed to

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1 Morteza Katebian. And the Item Number 1 in Requests to Produce
2 on Page 8272, going to 8273, asks for "any account you maintain
3 in the United States or Canada," and then 8, Subsection 8, "any
4 bank account you maintain on behalf of any third party."

5 So I thought that was relatively clear, and I think we
6 asked for those parallel for Mr. Payam Katebian and
7 for Ali Behrouz as well because I don't see why we would not
8 have, and I don't have those directly in front of me. So
9 that's where that came from.

10 **THE COURT:** This document is a request for production
11 not related to the letters rogatory; correct?

12 **MR. KOCHANOWSKI:** That's correct.

13 **THE COURT:** And have you ever received formal
14 responses to these requests to produce and the interrogatories?

15 **MR. KOCHANOWSKI:** About two weeks, two or three weeks
16 ago we received a set, yes. It was four months later or so.
17 They were singularly unhelpful, I have to say, but we decided
18 against -- because, in light of the all of these motions, we
19 decided to try to tackle it via meet and confer, and I think
20 Mr. Schwartz started that process.

21 But the answer, the answer to the Court's question is yes,
22 we have a set of answers. They either say, well, we're looking
23 for them or makes somewhat evasive answers, and so we have not
24 tackled that as a discrete discovery issue, you know, via
25 motion.

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1 **MR. WALSH:** Your Honor, I have to confess, and this
2 is my error, the request attached to Docket 158 does not match
3 the request that I received, which I'm looking at right now,
4 where Number 7 says, "Any bank account you maintain in the
5 United States." It does not say "or Canada." And I don't know
6 if there is an issue with regards to having received different
7 versions, but I'm looking at the version that I received, and
8 I'm happy to share the screen, Your Honor.

9 **THE COURT:** Sure. Go ahead.

10 **MR. WALSH:** Right here is the request that I
11 received, and this is the request directed to Payam, and they
12 are identical to Morteza Katebian and Ali Behrouz, and Number 7
13 says "any bank account you maintain in the United States." And
14 if I'm mistaken, I'm happy to be corrected, but that's what I
15 received.

16 **THE COURT:** Scroll up and see what the document is.
17 All right. Is it any -- the one that we were looking at
18 previously I believe was to --

19 **MR. KOCHANOWSKI:** Morteza.

20 **THE COURT:** Morteza, which I don't know if they are
21 different or not, and I don't know if you just maybe,
22 Mr. Walsh, assumed they were identical, but from my
23 perspective, you know, the defendants are producing documents
24 now. They are gathering them. They are doing them the right
25 way in terms of submitting them to the DISCO service. I don't

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1 want us to get bogged down in, okay, if there was an issue --
2 I'm sure there will be lots more motion practice yet to go in
3 the case. And so if there's a discrete issue where a category
4 or multiple categories have not been adequately addressed, you
5 know, you can do meet and confers on those, hopefully address
6 them on your own, and, if not, obviously plaintiffs remain free
7 to file new motions as necessary.

8 **MR. WALSH:** Your Honor, to be clear, I'm not pointing
9 it out to suggest that we would not produce those things, but
10 merely that we should not be punished had we not produced them
11 thus far.

12 **THE COURT:** All right. Well, as I said, I am not
13 ordering sanctions about any of this right now. I just want to
14 get this on track with the documents and with minimizing the
15 areas of dispute.

16 **MR. WALSH:** Understood, Your Honor.

17 **THE COURT:** All right. So that takes care of 158.
18 155 is the -- I'm sorry, 157 is the other motion for sanctions,
19 which relates to the Iranian documents -- correct? --
20 Mr. Kochanowski?

21 **MR. KOCHANOWSKI:** Yes, Your Honor.

22 **THE COURT:** Okay. And this one -- this is very
23 concerning because I just don't know what to make of this when
24 the plaintiffs are saying, you know, we got these Iranian
25 records off the official Iranian governmental website, which I

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1 guess is similar to what I might do here if I wanted to look up
2 certain filings of corporate records. I can go to the Michigan
3 service and find out who owns what, and, you know, if there are
4 proof of service issues and what not, and it strikes me like,
5 okay, they have got something similar in Iran, and the
6 plaintiffs have identified specific businesses that seem to be
7 owned by the Katebian defendants or certain of the Katebian
8 defendants, and then the Katebian defendants in their
9 depositions just say, no, we don't have any idea what they are
10 talking about and those documents must be fabricated. And so,
11 I don't know, I'm not here to make a decision on that, but I
12 just don't understand what the defense doing then to get to the
13 bottom of it and kind of where we go from here.

14 Mr. Kochanowski, it's your motion. Is there anything else
15 you wanted to add?

16 **MR. KOCHANOWSKI:** Well, yes, Your Honor, because the
17 position that we have taken, and we have shared these documents
18 with defendants really literally for -- I think we dug them up
19 in December. We started showing them in January of this year,
20 and the response has always been the same, that the real
21 question is, for purposes of substance in this case, is did
22 Behrouz -- stepping back a little bit -- who supplied the money
23 to buy the Extensia financial note in order to, in order to
24 then foreclose against the plaintiffs on the property and
25 obtain the Georgia property? At least part of the case.

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1 The defendants really gave us no answer for months and
2 months, but the clues that we had was that Ali Behrouz was
3 identified as either the lender or the investor or both on the
4 Green Lake -- with respect to that loan, and a portion of the
5 Green Lake loan went to repay \$550,000 to Ali Behrouz. That's
6 on the Green Lake document.

7 And then we ran across -- then we ran across an email
8 written by Mr. Chang to Mr. Payam Katebian which said, you told
9 me -- and I'm paraphrasing but not very much -- you told me
10 that the money came from the Katebians and a Canadian/Iranian
11 alloy [ph]. And, you know, that was part of the emails we got
12 from I believe the law firm that represented Green Lake in the
13 due diligence. Or it could have been also Harrison -- the
14 Coleman law firm that represented the Katebians during due
15 diligence.

16 So we started looking for, quite particularly, what
17 businesses did the Behrouzes have in Iran going back a number
18 of years, and we found I think four or five, and it's unclear
19 because some looked like they kind of split off from each
20 other. That's why it's unclear exactly how many, but -- and
21 then we hired an Iranian law firm to go and make sure that we
22 had the certified versions of them, which we could not obtain
23 from that website, and the Iranian law firm did come back with
24 a report and embedded what I think are the certified versions
25 of an Islamic law of the record. So in the midst of -- and we

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1 supplied all of that to the defendants, and the answer was
2 these are all fakes, as the Court pointed out.

3 Mr. Ali Behrouz in his deposition said, after saying these
4 are all fakes, did say, well, we operated Pak Gostar Pishtaz
5 company. That's one of the companies that we're talking about.
6 And we went back and looked at the records of Pak Gostar
7 Pishtaz, and indeed that was a company that was set up,
8 according to Iranian records, in 2008.

9 And then, then we realized that we had emails from
10 Ali Behrouz on a Pak Gostar Co. email account, and then we
11 checked and found a number of other emails. And then we said,
12 well, was this a real operational company? And the answer
13 is -- and we gave the Court a little brief last Friday -- is it
14 appears that it was. There are records going back 15 years of
15 the company doing business in Iran, Canada with Canadian
16 partners, Germany and possibly elsewhere, that they would end
17 up for some reason on the U.S. Department of Commerce's list of
18 either sanctioned or companies of concern, and we attached the
19 citations to that. I mean those records are --

20 **THE COURT:** You are cutting out a little bit.

21 **MR. KOCHANOWSKI:** Well, so what we have from our
22 standpoint is we now have a set of at least records that show
23 that company existing since at least 2007 and a web domain
24 registration from 2004 that is still active, and the websites
25 are still active and up, you know, so we can see and references

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1 to those companies -- to that company going back 15 years. So
2 that takes us almost out of the realm of "what does the Iranian
3 corporate records website provide" and into the "what did they
4 actually do" world.

5 And what we would like to establish, and we think this is
6 what establishes it, is that the Behrouzes did conduct
7 operations in an Iranian company -- with an Iranian company in
8 Europe, in Canada with Canadian partners, with European
9 partners, German tech firms and all of that, and food. And
10 that dovetails into now the Iranian records, which show that
11 the other three companies that we think are the Behrouzes were
12 all references to this one operational company because the
13 descriptions match, the charters match, essentially everything
14 else matches about it. And then the --

15 **THE COURT:** Have you gotten responses yet to the
16 written discovery regarding these issues? Because at the
17 filing your motion you had not.

18 **MR. KOCHANOWSKI:** We got a denial -- the only company
19 we asked about is the Morrow Company that we believe that the
20 record shows was formed in 2018 between Morteza Katebian and
21 Ali Behrouz, and that company is now listed as essentially a
22 subsidiary of or owned by one of the companies that we think is
23 the operational company.

24 So we asked about Pars Farda. The answer we got was no
25 it's not our company, we know nothing about it, and I think

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1 that's still their position today.

2 So, I mean I don't know if it's a solvable issue, but from
3 plaintiffs' perspective, if you've run an operational company
4 for 15 or 18 years and you say, well, I know nothing about it,
5 well, we'll deal with it in some fashion or another, but that's
6 where we are today. They have simply denied all of these
7 companies.

8 **MR. WALSH:** Your Honor, if I may?

9 **THE COURT:** I don't know because you haven't supplied
10 me with their answer, and I know they hadn't provided it at the
11 time you filed the motion. But like I'm looking here at
12 Interrogatory Number 3. Let me do a share screen quickly.
13 This is for Mr. Behrouz's -- the request that went to
14 Mr. Behrouz.

15 So this is Interrogatory Number 3. "Set forth whether you
16 own directly or indirectly" -- and one thing I want to point
17 out is this interrogatory and some of admissions and some of
18 the averments all speak about the present, and that's not
19 necessarily relevant to the claims in this case, which is what
20 happened and what was your ownership, if anything, during the
21 time in question.

22 And so I still haven't seen real clear answers to that,
23 and I still, when I read those answers, I still have a question
24 in my mind of, okay, but what about during the relevant time.
25 So, number one, I think that needs to be clarified, but that

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1 wasn't necessarily the question here because it says, "Set
2 forth whether you own presently, directly or indirectly -- I
3 should say it all in present tense -- any of these entities."
4 It does say, "but anything other than an unqualified yes, set
5 forth your contention how and why the company came into
6 existence."

7 So I don't know what was said there. I mean do you have
8 their answer before you where you could share it with me right
9 now or not?

10 **MR. KOCHANOWSKI:** Your Honor, I do not right now.
11 I'm actually in Maine, and my server is in Detroit.

12 **THE COURT:** All right. Let me ask Mr. Walsh. What
13 did your clients say in response to that question?

14 **MR. WALSH:** They said no, they don't, they don't own
15 it and --

16 **THE COURT:** What about the second part that says how
17 and why -- see, what I would say is if it says how and why the
18 company whose records have been identified came into existence,
19 if you had a -- if your clients had a prior ownership, then
20 they would say there, I would think, oh, well -- they would
21 know the answer to that question even though they are not
22 currently an owner.

23 **MR. WALSH:** Your Honor, their answer was they do not
24 now and never did.

25 **THE COURT:** Do not now and never did have an

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1 ownership interest in any of those entities?

2 **MR. WALSH:** That's correct.

3 **THE COURT:** Okay.

4 **MR. WALSH:** They don't have records on the formation.

5 **THE COURT:** Then what is their explanation, if
6 anything, as to the Government records, which, as I said, under
7 Rule 902 are essentially self-authenticating. I mean it does
8 give you -- your clients the opportunity to present some sort
9 of rebuttal, but I don't think it just allows you to say -- or
10 your clients to say, no, those have got to be fake. I think
11 you have got to do more so what is going on with those?

12 **MR. WALSH:** And, Your Honor, we are doing more. Up
13 until the present time we have had to do this with one arm tied
14 behind our back because plaintiffs would not provide any
15 discovery. But the point is we did engage counsel in Iran as
16 well, and we asked that counsel to investigate the official
17 records in Iran to determine whether or not both -- any of the
18 clients had an ownership interest in either of those companies,
19 but, more importantly, whether Mr. Katebian, individually or in
20 conjunction with Ali Behrouz, had any interest at any time in
21 any Iranian business venture, and he will be providing an
22 affidavit that says no, he doesn't.

23 And please keep in mind that up until recently we were
24 also examining records of an arrest that bore the stamp -- or
25 purportedly the stamp of official Iranian government agencies

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1 and would have been self-authenticating, and they were not
2 genuine either.

3 **THE COURT:** I understand, and that's why I raised
4 that, and that's why I wanted to be very clear that I am
5 rejecting the notion that the existence of those documents is
6 irrelevant. At the same time the law, and I'm looking at
7 Rule 902(3) right now, which speaks to foreign public
8 documents, and it essentially says they are
9 self-authenticating. It does say at the very end, "If all
10 parties have been given a reasonable opportunity to investigate
11 the document's authenticity, the Court may, for good cause,
12 either: (A) order that it be treated as presumptively
13 authentic; or (B) allow it to be evidenced by an attested
14 summary with or without final certification."

15 So, you know, number one, I don't know that there hasn't
16 been already enough time for a reasonable investigation. At
17 the same time I do recognize that it was only recent that we
18 had this issue come up with respect to the photographs and the
19 arrest records, and so I think that at least some additional
20 time is warranted for the Katebians to -- the Katebian
21 defendants to put their position forward as to these issues.
22 But it's just -- I mean you can obviously appreciate the
23 position the Court is in where I'm presented with documents
24 that come not just from a second Iranian source, as was
25 indicated with the arrest record, but directly from the

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1 government of Iran and being told, well, Judge, just -- you
2 know, they are fake. And they are just -- I'm just giving you
3 advance warning that my sense on the law is that there has to
4 be more if your clients wish to actually challenge those
5 documents.

6 **MR. WALSH:** There will be, Your Honor, and that's
7 what we're in the process of doing.

8 **THE COURT:** All right. As I said, I'm giving that --
9 I'm making that clear on the record now, that that's what my
10 explanation is, for there to be a legitimate challenge to those
11 documents under this rule of evidence.

12 So -- okay. So getting back to our motion then,
13 Mr. Kochanowski. I mean I obviously hear everything you are
14 saying about how this looks. You have in this respect done a
15 good job of showing me where the documents come from, properly,
16 you know, properly supporting the document's authenticity and
17 all of that.

18 At the same time, as I just said, we have this other issue
19 that came up that is at least somewhat similar in terms of the
20 authenticity of Iranian-sourced documents, and so I don't think
21 that there's anything for me to do right now other than, as I
22 have done, put on the record this very, you know, direct
23 warning about what is and is not going to be sufficient to
24 overcome that rule of evidence. And I mean you have the
25 answers. You are doing discovery. I'm going to now open the

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1 discovery process, and maybe that will allow the Katebian
2 defendants to have a full opportunity to determine what it
3 believes are the relevant facts regarding these issues, but,
4 other than that, I don't know that there's any relief for the
5 Court to provide at this time in light of the discovery
6 responses that you have been provided.

7 Is there anything else that you want me to consider at
8 this point?

9 **MR. KOCHANOWSKI:** Well, Your Honor, I think the --
10 generally, no. I think the Court's ruling is clear, and, you
11 know, it's, it's fine with the plaintiffs. The more narrow
12 issue that we embarked upon and why we had this kind of
13 unilateral discovery is that, is that the Behrouzes and the
14 Katebians each submitted an affidavit that said we did not do
15 business in Iran. We did not do business through UAE. We did
16 not do -- we did not have a business, either ourselves or in
17 combination, and that's -- I checked their affidavits, their
18 declarations, and the existence of now not just corporate
19 records. Anybody can file for a corporation and not do
20 anything operationally, but what we think are 15, 16, 17 years'
21 worth of an actual operation by the Behrouzes of a business
22 is -- contradicts those declarations.

23 And to the extent that we pursue the original freeze
24 assets motion, which we had intended to pursue after the
25 Court's ruling in April, and we think we have evidence both

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1 with the [audio dropped] and with the NLCR operational records
2 that the declarations were false. And I don't have a -- so
3 whether or not an Iranian lawyer for the Katebians submits some
4 affidavit about Morteza not having a business in Iran, with all
5 due respect, that doesn't answer the question.

6 So I guess we'll see what he has to say or what the
7 defendants have to say, but if I could ask the Court to put a
8 time limit on when, when will they come up with the answer.
9 The answer right now is Ara Missaghi somehow doctored the
10 records -- doctored the records. That's the answer we got via
11 testimony in deposition. I don't know if this lawyer will have
12 a better answer or what, but we should have a time limit on it
13 so that we know when we can sort of bring this issue to a head.
14 That's my only comment.

15 **THE COURT:** All right. Well, you know, as I said,
16 right now I only have this motion in front of me that's seeking
17 essentially a final determination as to this and the imposition
18 of sanctions. It says that I should deem the request to admit
19 admitted and treat the failure as an admission so that's the
20 issue that's before me so I'm not going to do that for the
21 reasons I have indicated.

22 I do agree with Mr. Kochanowski that this, Mr. Walsh, it
23 looks terrible for your clients in terms of their reliance on
24 Government-issued documents that apparently anyone right now,
25 any of us could, sitting on our own servers, go to the Iranian

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1 website and get these documents. So it doesn't seem like you
2 are going to have the argument that, oh, somebody, you know,
3 made fake copies and got them in Mr. Kochanowski's hands
4 somehow and that's, Judge, what you are looking at that.

5 That doesn't necessarily mean that there isn't some other
6 explanation. I don't know. And, as I note, some of the issues
7 that I started with give me concern about entering any kind of
8 sanctions order in this case until I, you know, very firmly
9 understand what the reality is. But Mr. Kochanowski's -- and
10 so that's why I'm not doing anything more at this time other
11 than issuing this warning, but Mr. Kochanowski is right, that
12 there has to be some sort of, you know, game plan here for how
13 we decide this case.

14 But I think that dovetails with my next matter, which is
15 the scheduling order in this case, and, you know, what I want
16 to do is put in place a fairly strict scheduling order that
17 essentially brings these issues to a head sooner rather than
18 later, and I don't know if it's going to come to some sort of
19 evidentiary hearing before the Court. Frankly, I think it
20 might be leaning that way on some of these issues with respect
21 to the requests for injunctive relief. Maybe some issues are
22 just kind of jury type issues based on at least how things have
23 been going so far, I don't know, but, you know, we need to have
24 a schedule in place that allows those decisions to be brought
25 to the Court and -- you know, in due course, but with

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1 sufficient factual development that were -- that the Court can
2 be rest assured that it's making its decision based on real
3 evidence.

4 That's what I want to get to now is putting the, you know,
5 that timeline together, and this now gets to the other
6 Defendants, the Green Lake defendants. I'm going to hear their
7 motion to dismiss based on both the merits and on the
8 arbitration issue in just a few weeks so I certainly don't
9 want, while I am considering that, for the Green Lake
10 defendants to be involved in the discovery process. I don't
11 know that that's going to be the more efficient use of anyone's
12 time and so, you know, my thought process is let's put a
13 discovery schedule in place right now that pertains to the
14 plaintiffs and all of the defendants other than the Green Lake
15 defendants. If the Green Lake defendants remain in the case
16 and it turns out that additional discovery time is needed
17 because they were later to the game, so to speak, you know, I
18 can certainly address that at the appropriate time.

19 So, with that, let me hear first from the Plaintiffs.
20 What are your thoughts about how much time you believe would be
21 an appropriate discovery period?

22 **MR. SCHWARTZ:** Your Honor, I had done something a
23 little different, and I apologize to the Court. We had
24 submitted a schedule about two months, a month and-a-half ago
25 based upon the status then. Obviously things have changed

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1 since then. And, as Mr. Kochanowski had told the Court at our
2 last telephone conference, it's our intention to, once
3 Your Honor rules on the motion to dismiss as to Green Lake, to
4 file an amendment incorporating, assuming Your Honor keeps
5 Green Lake in, a lot of the items that are in our supplement
6 and also adding a couple of defendants regarding the Katebian
7 part of the case.

8 What I had suggested -- what I had suggested with
9 Mr. Kochanowski earlier is that you have the hearing coming up
10 in December on the motion to dismiss and, assuming Your Honor
11 would grant -- were to deny the motion to dismiss and we will
12 then going forward to amend our complaint, I did a discovery
13 schedule based upon an amended complaint being filed sometime
14 in January with a response due around the end of January. If
15 you want -- I can recalculate now based upon a separate track
16 of discovery for the Katebian defendants and then, you know,
17 add in the Green Lake defendants, which would move my dates
18 back a bit.

19 **THE COURT:** I think it's important right now that we
20 have a schedule in place that allows discovery to move forward
21 with respect to just the plaintiffs and the Katebian
22 defendants. I want to give Mr. Walsh an opportunity to do his
23 investigation into, you know, his clients' position about what
24 these documents are, how they came to be, you know, all of
25 that, and to me that's all kind of separate issues than the

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1 ones I'm facing with respect to the Green Lake defendants so --

2 **MR. SCHWARTZ:** May I suggest the following, Judge?
3 In light of the fact that Mr. Walsh is going to be providing
4 certain documentation by the end of next week, which is, I
5 believe, December 3rd, may I suggest that we begin general
6 discovery as to Green Lake -- I'm sorry -- as to the Katebian
7 defendants and the plaintiffs on or about December 6, which
8 would be the Monday subsequent to Mr. Walsh providing those
9 documents, and initial disclosures due on or about the 10th of
10 December, and general discovery approximately six months after
11 December 6, sometime in early June, and I would suggest then
12 that it be June 6, which is also a Monday, for the end of
13 general discovery, expert reports being required on June 13th,
14 rebuttal reports on June 27th, and expert discovery ending on
15 July 11th, dispositive motions on or about August 1st.

16 **THE COURT:** All right. Mr. Walsh, any thoughts on at
17 least the kind of general time frame of roughly six months of
18 discovery? That's the main one that kind of drives all the
19 other dates. Any problem with that kind of time frame for
20 discovery?

21 **MR. WALSH:** No, Your Honor.

22 **THE COURT:** All right. Any issues with any of the
23 other -- I have my own kind of expert deadline process that,
24 you know, it's fairly close, Mr. Schwartz, to what you said.
25 It maybe builds in a little more time for the depositions and

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1 the rebuttal reports and that, but it will be in that same
2 general time frame.

3 **MR. SCHWARTZ:** Thank you.

4 **THE COURT:** Unless anyone has anything else to add --

5 **MR. WALSH:** Your Honor, I'm sorry to interrupt. I
6 have one thing to add.

7 I had discussed with plaintiffs and we did not reach an
8 agreement. I would like to see a date by which the Katebian
9 defendants and the plaintiffs amend the pleadings without
10 leave. The general discovery is only beginning. The Katebian
11 defendants have not had a chance to conduct any to date, but
12 what we have found suggests that claims against these
13 plaintiffs, and, more appropriately, third parties might be
14 appropriate, and to spend time and money doing motions for
15 leave to amend seems inefficient at this point.

16 **MR. KOCHANOWSKI:** Your Honor, we certainly did talk
17 about it, and I think we gave Mr. Walsh a very clear answer,
18 which is no. My understanding is that he wants to resurrect
19 the dismissed case that was filed by Payam Katebian in 2018,
20 and we had told him repeatedly that we think that case is just
21 infirm legally and the statute on that would be blown anyways.

22 We have no understanding why, after all of the litigation
23 and all of the stuff that went on before in this case, they
24 didn't file any affirmative defenses, but they didn't file any
25 affirmative defenses with their answers so maybe there's a

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1 reason for it, maybe there is an excuse for it, but we
2 certainly would oppose any kind of presumptive, well, you can
3 go ahead and raise whatever you want without leave of Court
4 because I think that either of those would be both futile and
5 waived, and we certainly would like an opportunity to argue
6 about whatever it is that they may think they want to amend
7 their existing position to.

8 **THE COURT:** All right. Well, at this point I'm just
9 going to enter a general discovery order that's going to govern
10 the case as it presently sits with respect to the plaintiffs
11 and the Katebian defendants. You know, obviously anyone is
12 able to file whatever motions they want subject to meeting the
13 applicable standards that apply to those motions, and I'm not
14 prepared to, you know, give any kind of advanced guidance as to
15 any of those issues right now. So we'll get that out soon.

16 **MR. WEISBERG:** Your Honor, if I might on behalf of
17 Green Lake, and I did hear the Court address -- or say that it
18 was going to address separately the Green Lake and presumably
19 Mr. Chang in connection with a scheduling order. I would like
20 to understand a little bit, however, how the Court views its
21 apparent intention to open up discovery with respect to the
22 other parties and how that is intended to either excuse or not
23 excuse the effect of that discovery on Green Lake and
24 Mr. Chang. Ms. Harrington can speak for Mr. Chang, but it
25 seems to me that the issue is the same, which is, while we feel

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1 that we are divorced from these other parties on a practical
2 level, the allegations in connection with those parties still
3 obviously are designed to, by plaintiffs, to attach to the
4 Green Lake Defendants. And so I'm not sure how we're really
5 protected in this process, particularly given the fact that
6 there is a suggestion being made that there will be additional
7 allegations or additional complaints that will be filed
8 depending upon how the Court rules on our motion to dismiss,
9 but if discovery is ongoing, there's no possible way that Green
10 Lake and Mr. Chang can be divorced from those proceedings, and
11 at the same time they are prejudiced by the fact that this
12 process of elongating the pleadings and elongating the
13 opportunity to file amended complaints has extended, and we're
14 sucking up mass quantities of legal dollars here in the
15 prospect that maybe we won't be in the case, but, if we are, we
16 are now being sort of, you know, theoretically protected from
17 additional discovery but really not because these processes are
18 going forward, which may very well arguably affect Green Lake
19 to the extent that they can be validated or not.

20 **THE COURT:** Well, I guess you have a pending motion
21 to be dismissed from the case on grounds that the plaintiffs'
22 claims against your clients and Chang are subject to the
23 arbitration clause and therefore not properly before this
24 Court. If you want to be participating in the discovery
25 process while that motion remains pending and -- that's fine.

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1 I thought your client might prefer to let that motion run its
2 course and see its resolution before it starts spending a lot
3 of time and money on discovery, but if it prefers to be
4 encompassed within the discovery process -- I mean I'm going to
5 hear that motion relatively soon and get our order out
6 relatively soon thereafter -- that's fine. I thought I was
7 potentially doing your client a favor by not making them incur
8 fees during the interim in the event that the motion would be
9 granted, but I don't know so ...

10 **MR. WEISBERG:** Your Honor, I do appreciate the
11 Court's consideration in that regard, and I'm not trying to in
12 any way limit it. I'm just simply suggesting that, given the
13 fact, as you alluded to, that you will be ruling on our motion
14 fairly shortly, and given the fact that we're in, you know, a
15 holiday season a little bit and so presumably there will be
16 people who will not have interest in pursuing depositions
17 during say Thanksgiving or the Christmas week or what have you,
18 it seems me that if discovery in general could be delayed until
19 those rulings occur no one would be prejudiced by that and at
20 the same time Green Lake and Mr. Chang would be protected in
21 having to not incur substantial amounts of fees and costs in
22 order to protect themselves against allegations that are being
23 spewed about in connection with other parties that we don't
24 believe we're part of but, nonetheless, have an obligation to
25 defend.

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1 **THE COURT:** Well, the problem is I want to get the
2 discovery going with respect to the parties for whom there is
3 no pending, you know, motion to dismiss, and while I am
4 optimistic that I will get you a decision on the two motions
5 that your clients have filed promptly, sometimes things happen
6 and I'm not as efficient as I would hope to be and not as
7 timely as I hope to be, and so while I would hope that I would
8 get the decision out reasonably shortly after the hearing, I
9 don't know for sure and so I don't want to have this case just
10 stagnate for however long that is and so I'm happy to -- as I
11 said, my inclination was to have this discovery move forward at
12 this point only as to the defendants -- Katebian defendants and
13 the plaintiffs. If you're saying that you would prefer to
14 still be included, then that's fine.

15 **MR. WEISBERG:** No, I'm not saying that, Your Honor,
16 and I think Ms. Harrington has something to say, too, before I
17 say anything further.

18 **MS. HARRINGTON:** Just to weigh in, Your Honor, I
19 think the largest concern on behalf of the Green Lake
20 defendants is having any further depositions going forward.
21 Those are the more expensive aspects of discovery. And so if
22 we're doing multiple depositions of the same parties to cover
23 things, that's probably the biggest concern. I don't have a
24 particular concern with written discovery going back and forth
25 between the plaintiffs and the Katebian defendants starting

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1 December 6, but if we can agree that there won't be any
2 depositions, further depositions set until after the Court
3 rules on the pending motions that will be heard December 17th,
4 I think that would take care of a lot of the concerns on the
5 part of the Green Lake defendants.

6 **MR. SCHWARTZ:** We have no problem holding off on
7 depositions.

8 **MR. WALSH:** I'm afraid I do.

9 **MR. SCHWARTZ:** I thought you would.

10 **MR. WALSH:** I don't want to do that. A lot of the
11 discovery that I need to conduct must be conducted asking
12 witnesses questions.

13 **MR. WEISBERG:** Nobody is precluding Mr. Walsh from
14 taking depositions ultimately, number one, and, number two is
15 the point of the discovery to date, in theory, was to be
16 limited to the freeze motion, and that's what Mr. Walsh wanted
17 to be able to oppose, I thought, at the present time.

18 So, again, I think this could be structured in a way where
19 if you want to take a deposition and it's limited to the freeze
20 motion, I'm not sure Ms. Harrington would have a problem with
21 that, but unfortunately in the past these depositions have
22 seemed to slip into a more generalized approach to the
23 questions that are being asked, and they are not limited to the
24 freeze issue itself. As a matter of fact, to my knowledge the
25 freeze issue has been barely touched in any of the discovery.

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1 **MR. KOCHANOWSKI:** I completely disagree, but --

2 **MR. WALSH:** And therein lies the problem.

3 **THE COURT:** The whole case is the freeze motion. I
4 mean that's -- that is the whole case, wrapped up in that.

5 I mean I don't know, Mr. Walsh. My assumption is that
6 there's going to be enough discovery to be done in terms of
7 documents and written discovery that your side's going to need
8 to send first to Mr. Kochanowski such that I should be able to
9 have an order out on the Green Lake and Chang motions well
10 before any, any depositions would realistically need to be
11 taken. And so, you know, I'm just going to proceed based on
12 what I said initially. If it comes up that there's a dispute
13 about whether a particular deposition should go forward or not
14 and you cannot agree, you know, I suppose somebody could file a
15 motion, and I would address it.

16 **MR. WALSH:** Your Honor, may we except out of that
17 Mr. Kiani-Nijad, the affiant, the counterpart of
18 Rouzbeh Behrouz? I would like to take his deposition sooner
19 rather than later.

20 **MR. KOCHANOWSKI:** We have no objection to it.

21 **THE COURT:** Ms. Harrington, any objection if just
22 that one were to move forward at this stage?

23 **MS. HARRINGTON:** On behalf of Mr. Chang, no, Your
24 Honor.

25 **MR. WEISBERG:** That's fine, Your Honor, on behalf of

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1 Green Lake.

2 **THE COURT:** All right, terrific. We'll get out that
3 discovery schedule, and I'll get out orders on all of these,
4 and we'll see you in a few weeks for the hearing. I hope
5 everyone has a nice Thanksgiving. Thanks very much.

6 (Proceedings concluded at 3:38 p.m.)

7 - - -

8 **C E R T I F I C A T I O N**

9 I certify that the foregoing is a correct transcription of
10 the record of proceedings in the above-entitled matter.

11

12 s/ Sheri K. Ward
13 Sheri K. Ward
14 Official Court Reporter

3/4/2022
Date

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